IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9285 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINODBHAI MOHANBHAI VEKARIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9285 of 2002

MR PJ KANABAR for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 19/12/2002

ORAL JUDGEMENT

1. Rule. Mr.Gori, learned AGP waives service of notice of rule on behalf of the State Government. With

the consent of the parties, the matter is taken up for final hearing today.

2. The short question involved in this petition is that if civil suit is filed prior to the enactment of Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 (hereinafter referred to as "Act"), whether the Civil Court's jurisdiction is ousted or is required to be transferred to the Tribunal or whether the Civil Court has the jurisdiction to try such suits.

3. The short facts of the case are that the petitioner filed Special Civil Suit No.151/1986 in the Court of Civil Judge (S.D.), Gondal for the recovery of Rs.5,72,575.82 on the ground of recovery of the amount towards security deposit, non-payment of the work already undertaken, loss of profit etc., of the works contract entered into by the petitioner with the respondent State Government. In the said Civil Suit, Application Ex.24 was filed by the State Government on 28-10-1988 to stay the proceedings of the Civil Suit on the ground that there is a clause of arbitration and the matter can be referred to the arbitrator. The learned Civil Judge on 30-11-1989 passed the order below the said application Ex.24, whereby the application was dismissed and the request of the State Government to stay the proceedings of the Civil Suit in view of Section 34 of the Indian Arbitration Act was dismissed. A statement is made at the bar that the said order is not challenged before any higher forum and is operating as on today.

4. Thereafter, on 29-7-2002, on behalf of the State Government, application Ex.174 was filed to transfer the proceedings of the suit to the Tribunal constituted under the Act. The learned Judge passed the order on 31-7-2002, below Application Ex.174, whereby he found that the matter is required to be transferred to the Tribunal constituted under the Act and, therefore, he ordered accordingly. It is that order of the learned Judge, which is under challenge in this petition.

5. Mr.Kanabar, learned Counsel appearing for the petitioner has relied upon the judgement of this Court in the case of "Gujarat Water Supply and Sewerage Board thro. Executive Engineer v. Heirs & L.R. of Pravinbhai Patel"(Coram: HH Mehta, J.), reported in 2002(2) G.H.J., 70 and unreported decision of this Court in the case of "State of Gujarat v. Valji Puna & Co."(Coram: NN Mathur, J.) passed in Civil Revision Application No.1286 of 1996 to contend that Section 21 would not be applicable in a matter where the dispute is not pending

under the Arbitration Act in a Court and he has submitted that the learned Judge has committed error in exercising the jurisdiction while transferring the matter to the Tribunal constituted under the Act.

6. On behalf of the State Government, Mr.Gori, learned AGP, while supporting the order passed by the learned Judge, has relied upon the decisions of this Court in the case of "Sardar Patel University v. Patel & Co.", reported in 1999(2) GLH, 1264 and in the case of "Sorathia Velji Ratna & Co. v. Gujarat Agricultural University & Anr.", reported in 2000(4) GLR, 3666 to contend that even if the dispute is in respect to the contract prior to the Act came into force, the matter is required to be transferred to the Tribunal constituted under the Act and the learned Judge has rightly passed the order.

7. Having considered the above and the scheme of the Act and Section 21 of the Act is relevant for the purpose of this petition, which reads as under:

> "21. The provisions of the Arbitration Act, shall in so far as they are inconsistent with the provisions of this Act, cease to apply to any dispute arising from a works contract and all arbitration proceedings in relation to such dispute before an arbitrator, umpire, court or authority shall stand transferred to the Tribunal."

On true construction of Section 21 of the Act, it transpires that if any dispute is pending before an arbitrator, umpire, court or authority in relation to the proceedings under the Arbitration Act, then such proceedings shall be transferred to the Tribunal. Therefore, in my view, for applying Section 21 of the Act, the basic condition precedent would be that the proceedings in relation to such dispute should be under the Arbitration Act. In a given case, the proceedings are being initiated under the Arbitration Act and if the matter is pending either before the Arbitrator or Umpire or after the award before the Court or any authority, then in that case, even if such dispute is during the period prior to the Act came into force, the same shall stand transferred to the Tribunal constituted under the Act.

8. In the present case, the dispute is not under the Arbitration Act in as much as the dispute is raised by filing a Civil Suit. Moreover, the application for

applying the Arbitration Act and for staying the proceedings in view of Section 34 of the Arbitration Act are, as stated above, dismissed by the learned Judge in the very Civil Suit. In that view of the matter, it cannot be said that the subject matter of the Civil Suit is pending on account of the proceedings under the Arbitration Act, but the proceedings are pending in the Court otherwise than the proceedings under Arbitration Act. In that view of the matter it cannot be said that the proceedings of the Civil Suit shall stand transferred to the Tribunal constituted under the Act.

9. In the case of "Gujarat Water Supply and Sewerage Board thro. Executive Engineer v. Heirs & L.R. of Pravinbhai Patel"(supra), this Court while after considering Section 21 of the Act, made a comparison with Section 31 of the Recovery of Debts Due To Banks and Financial Institutions Act, 1993 and thereafter the Court observed that in view of the language of Section 21 having compared with Section 31 of the aforesaid Act of 1993, it cannot be said that the jurisdiction of the Civil Court is ousted. In the decision in the case of "State of Gujarat v. Valji Puna & Co."(supra), after considering Section 21 of the Act, the Court found that there are no arbitration proceedings pending as on 1-1-1994 and, therefore, Section 21 of the Act is not attracted.

10. The reliance placed by the learned AGP and even the reference made by the learned trial Judge in the impugned order upon the decision of this Court in the case of "Sorathia Velji Ratna & Co. v. Gujarat Agricultural University & Anr."(supra) are ill-founded in as much as in the said case Application under the Arbitration Act was moved before the Court for appointment of the Arbitrator and at that stage, the matter was considered as to whether the proceedings are required to be transferred to the Tribunal constituted under the Act or not. Similarly, in the decision of "Sardar Patel University v. Patel & "Sardar Patel University v. Patel & Co."(supra), the facts were that after the appointment of the Arbitrator, the award was passed on 16-9-1992 and after the award, the proceedings were pending before the Civil Court under Section 14(2) of the Arbitration Act, 1940 and at that stage the question arose for transferring the proceedings to the Tribunal constituted under the Act, whereas in the present case, no proceedings are initiated under the Arbitration Act before the Civil Court. It may be in a case the proceedings before the Civil Court may be initiated under the Arbitration Act prior to the

appointment of the Arbitrator also, but such is not even the case, because as observed above, the request to invoke the Arbitration clause is expressly not accepted by the Court.

11. In view of the above discussion, it cannot be said that the proceedings of the Special Civil Suit No.151/1986 are pending in the Civil Court under the Arbitration Act and, therefore, Section 21 of the Act will have no application. As a consequence thereof, the Civil Court will continue to assume the jurisdiction for entertaining and trying the proceedings of Special Civil Suit No.151/1986. Therefore, it appears that the learned Judge has manifestly committed error in exercising the jurisdiction and, therefore, the order deserves to be quashed by exercising power under Article 227 of the Constitution of India.

12. In view of the above, order dated 31-7-2002 passed by the learned Civil Judge (S.D.), Gondal Application below Ex.174 is quashed and set aside. Special Civil Suit No.151/1986 shall stand restored to the Court of Civil Judge (S.D.), Gondal, with liberty to the petitioner to submit the papers of the Civil Suit.

13. The petition is allowed accordingly. Rule is made absolute. No costs.

19-12-2002 (Jayant Patel, J.)

vinod